IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 13 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMESHBHAI SOMABHAI PATEL

Versus

DINESHBHAI ACHALANAND RATHI

Appearance:

1. Criminal Revision Application No. 13 of 2004

MR PM DAVE for Petitioner No. 1

MR ASHISH D OZA for Petitioner No. 1

DS AFF.NOT FILED (N) for Respondent No. 1

MS NANDINI JOSHI, APP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 28/01/2004

ORAL JUDGEMENT

1. This Court while issuing notice for final disposal on 13.1.2004, notice was made returnable on 28.01.2004. However, the matter has not been listed and so today, at the request of ld. counsel Mr. Dave appearing for the petitioner, papers of this matter are called from the Registry and matter is taken up for final disposal.

2. Rule. Service of Rule is waived by ld. APP Ms. Nandini Joshi for respondent No.2 State. Respondent No.1 complainant Mr. Rathi is also present in the Court and he waives service of Rule.

3. That the petitioner came to be tried and convicted for the offence punishable under Sec.138 of The Negotiable Instruments Act (herein after referred to as the N.I.Act) and by impugned judgment and order of sentence dated 31.1.2000 passed by ld. Metropolitan Magistrate, Court No.19, Ahmedabad in Criminal Case No.272/1997, and was sentenced to suffer S/I for 1 year and to pay a fine of Rs.5,000/ I/d to undergo further S/I for 3 months and also to pay compensation of Rs.25,000/ to the complainant. The petitioner challenged the said judgment and order by filing Cri.Appeal No.4/2000 in the Court of ld. City Sessions Judge, Ahmedabad, and ld. Addl. City Sessions Judge, Court No.7, Ahmedabad, vide judgment dated 28.11.2003 has dismissed the said Criminal Appeal. The petitioner has, therefore, filed present Cri. Revision Application challenging both the aforesaid impugned judgments and orders.

4. Earlier when this Revision Application was listed for admission hearing on 13.1.2004, a statement was made on behalf of the ld. counsel appearing for the petitioner that the parties have settled the matter out of the Court and petitioner shall see that original complainant Mr. Rathi- respondent no.1 appears before the Court on the next date of hearing and, therefore, as stated at the outset, this Court issued notice for final disposal making it returnable on 28.01.2004 and today the papers of Cri. Rev.Application are called for and matter is taken-up for final hearing.

5. Original complainant Mr. Dineshbhai Achalanand Rathi- respondent no.1 is present before the Court. Ld. counsel Mr. Dave appearing for the petitioner identifies him in the Court. Ld. counsel Mr. Dave has also placed on record a declaration made by complainant respondent no.1 Mr. Rathi dated 9.1.2004 confirming the acceptance of an amount of Rs.1 Lakh, which is taken on record. Mr.Rathi who is present in the Court also confirms that he has received an amount of Rs.1 Lakh and further

confirms that he has compounded the matter- present case- out of the Court.

6. In view of above facts situation, ld. counsel Mr. Dave appearing for the petitioner accused prayed that accepting the say and the fact of settlement between the parties out of Court, parties may be permitted to compound the offence and consequently petitioner accused be acquitted.

7. My attention is draw by ld. APP Ms. Nandini Joshi to the decision of the Apex Court in the case of O.P.Dholakia v/s State of Haryana & Another, reported in (2000)1 SCC 762, wherein the Apex Court, in exercise of powers vested in it under Article 136 of the Constitution of India, annulled the conviction and sentence for the offence punishable under Sec.138 of The N.I.Act. However, now the provisions of the N.I Act have been suitably amended by inserting Sec.147 in the said Act and offence punishable under the provisions of the N.I.Act has been made compoundable. It has been submitted by Ms. Joshi that the amendment in the Act has come into force from 6.2.2003 and the date of the decision by the Sessions Court is 28.11.2003 viz. much later than the amendment coming into force and so it can be said that the parties could have compounded the offence at any time prior to the pronouncement of the judgment by the Sessions Court in the appeal. Hence, the question is whether at this revisional stage, such compromise arrived at between the parties or compounding of the offence between the parties can be permitted by the Court ? and/or Whether the date of offence or first conviction would be relevant? Questions posed by ld. APP Ms. Joshi need appreciation.

8. The language of Sec.147 as inserted in the N.I.Act by amendment, is self-explanatory which reads as under :-

> "147. Offences to be compoundable-
> Notwithstanding anything contained in the Code of Criminal Procedure,1973 (2 of 1974), every offence punishable under this Act shall be compoundable."

9. The victim of the offence can compound the offence notwithstanding anything contained in CrPC,1973. In other words, the parties can settle the alleged criminal wrong and conclude their dispute under adjudication and request the Court where it is pending to pass appropriate order viz. order of acquittal. Undisputedly, the petitioner accused has approached this

Court for scrutiny of the legality and validity of the order of conviction and sentence and, therefore, the original complainant can positively appear before this Court and say that he has compounded the offence with the accused and now he has not to pursue the remedy, that he is not interested in proceeding with the complaint and to see that the accused is sent to the prison. The effect of the same would be practically or say similar to a withdrawal from the prosecution with or without any qualification. So, the original complainant if comes to the Court and says that he is withdrawing himself from prosecution on account of compromise and he has compounded the matter, then obviously the conviction and sentence shall have to be annulled /set aside. Considering the language of the section, even there is no scope for the Court to consider whether such a request should be accepted or not. No formal permission to compound the offence is required to be sought for.

10. Considering the language of Sec.147 of The N.I. Act, it is not necessary to consider the scheme of Sec.320 of CrPC, but to appreciate the questions posed, it can still be looked into other relevant provision. Sec.320 of CrPC divides compoundable offences in two different parts by sub-section (1) & sub-section (2). Subsequent sub-sections deal with other contingencies, qualifications or embargoes. But Sec.147 of The N.I.Act says that offence shall be compoundable and it does not provide for any other or further qualification or embargo like sub-section (2) of Sec.320 of CrPC. The parties can compound the offence as if the offence is otherwise compoundable. Thus, the offence is made straightway compoundable like the case described under sub-section (1) of Sec.320 of CrPC. Sub-section (9) of Sec.320 of CrPC has no room to play because of non-obstante clause in Sec.147 of The N.I.Act. However, while accepting such plea of compromise at the revisional stage, the Court can certainly look to the intention of the Legislature and object of sub-section (6) of Sec.320 of CrPC in the background of pragmatic approach of the Hon'ble Supreme Court in the case of O.P.Dholakia (supra) under Article 136 of the Constitution of India.

11. The declaration placed before the Court and the presence of the original complainant respondent no.1 today before the Court takes me to a conclusion that the say of the complainant should be accepted that he has withdrawn from prosecution because he has compounded the offence out of the Court. As per the settled legal position, the effect of compounding of the offence is that of acquittal.

12. In view of above facts and circumstances, the say of the parties is accepted. Date of offence or the first conviction is not relevant in view of the Scheme of Sec.147 of The N.I.Act and it is not necessary to discuss whether it has retrospective effect or not. Under the circumstances, the conviction and sentence imposed on the petitioner accused for the offence punishable under Sec.138 of The N.I.Act is hereby quashed and set aside the petitioner accused is acquitted of the offence for which he was convicted and sentenced.

13. Rule is made absolute accordingly.
Direct Service is permitted.

[C.K. BUCH, J]
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